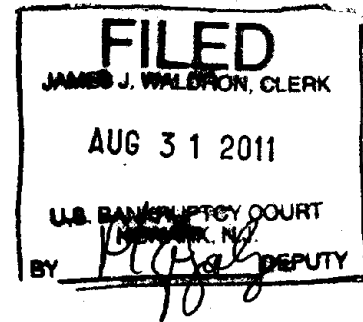


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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:

BEN COSTANZA and SUSAN COSTANZA,

Debtors.

Chapter 11

Case No. 11-33554 (RG)

Honorable Rosemary Gambardella

**ORDER APPROVING BIDDING PROCEDURES IN
CONNECTION WITH THE DEBTORS' AUCTION SALE OF
REAL PROPERTY**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

ORDERED.

8/31/11

USBT

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UPON the Verified Applications (the "Motion") of Ben Costanza and Susan Costanza (the "Debtors") for an Order (the "Motion"), pursuant to 11 U.S.C. §§ 105(a) and 363(b)(1), authorizing the Debtors to (a) solicit competing bids for the sale of the Property (as defined in the Motion); (b) approving competitive bidding procedures related thereto; (c) scheduling an auction (the "Auction") with respect to the sale of the Property, as necessary; and (d) granting such other relief that this Court deems just and equitable; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estate, and their creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and that no other or further notice is necessary; and (v) upon the record herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein,

IT IS HEREBY ORDERED that:

1. The following bidding procedures her eby are approved:¹
 - (a) **"AS IS, WHERE IS":** Any bid shall be a bid to purchase the Property shall be on an "AS IS, WHERE IS" free and clear of all liens, encumbrances, purchase contract, options, interests and claims, whether known or unknown, choate or inchoate, pursuant to section 363(f) of the Bankruptcy Code. The Debtors make no representations or warranties whatsoever.
 - (b) **Auction Location:** The Auction shall be conducted on September 22, 2011 at 1:00 p.m. at the Sheraton Edison Hotel Raritan Center, 125 Raritan Center Parkway, Edison, New Jersey 08837.
 - (c) **Qualification to Bid:** To qualify to participate in the Auction, a bidder must provide an initial deposit in the form of a certified check, bank cashier's check

¹ All capitalized terms contained herein shall have the meaning ascribed to them in the Debtors' Motion filed in support of this Order unless otherwise defined herein.

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or other check approved in advance by Max Spann and payable to the Trenk DiPasquale attorney trust account upon signing of contract.

- (d) **Qualified Bidders:** Any bidder that qualifies will be a "Qualified Bidder." Only Qualified Bidders will be permitted to participate in bidding for the Property at the Auction. The Auctioneer shall reasonably determine in good faith, whether any bidder is a Qualified Bidder.
- (e) **Breach Of The Agreement Of Sale:** Any Deposit will be forfeited as liquidated damages and the Successful Bidder held liable for compensatory damages if the Successful Bidder fails to close by reason of its breach of the Agreement of Sale.
- (f) **No Contingent Bids:** Bids are not subject to financing, due diligence, zoning, environmental or any other contingency except the entry of an order of this Court approving the sale pursuant to section 363(b) of the Bankruptcy Code.
- (g) **The Auction Format:** All bidding is open and public. To bid during the Auction, a Qualified Bidder need only raise their hand, shout out their bid or instruct an auctioneer's bidder assistant to call out a bid on behalf of the Qualified Bidder.
- (h) **Bidding at the Auction:**
 - (i) After the initial opening bid, all subsequent competing bids shall be in increments at the direction and discretion of the Auctioneer. No bid shall be of the same amount as any existing bid.
 - (ii) Auctioneer reserves the right to reopen the bidding and re-bid the Property, in the event of a bidding dispute occurring at the Auction.
 - (iii) Auctioneer reserves the right to determine with whom the bid is placed in the event of a tie or dispute.
 - (iv) Oral and written announcements made by the Auctioneer before the commencement of the bidding take precedent over any previously distributed materials.
 - (v) Bids made after the bidding is concluded at the Auction will not be considered by the Court.

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- (vi) All bids are subject to approval by the Debtors in their sound business judgment and the United States Bankruptcy Court for the District of New Jersey.
- (vii) Back Up Bid: The second highest price bid will be deemed the back up bid (the "Back Up Bid") and shall remain open for a period of thirty (30) days. If the winning bidder fails to close for any reason, the Debtors reserve the right, in their sole discretion and sound business judgment, to close with the Back Up Bidder.
- (i) Appearance at Auction: All Qualified Bidder(s) must appear in person or via telephone or through a duly authorized representative or by submitting a bid prior to the Auction to be entered into the bidding at the Auction.
- (j) Jurisdiction of Court: The Auctioneer shall conduct this sale for and as directed by the Court for the benefit of the parties. The Auctioneer, all bidders and their brokers or representatives are deemed to have submitted to the exclusive jurisdiction of the Court with respect to any dispute relating to all matters related to the Auction and all terms and conditions of the transfer of the Property.
- (k) Successful Bidder Default: If any Successful Bidder fails to close the sale contemplated herein, it will be liable for and forfeit any Deposit.
- (l) Closing: The closing of the sale(s) pursuant to the Auction (the "Closing") shall take place in accordance with the terms of the Agreement of Sale.
- (m) Bankruptcy Court Approval: The sale of the Property contemplated herein shall be subject to the entry of an order, or orders as the case may be, by the Court: (a) approving the sale and transfer of the Property; and (b) containing a finding that the Successful Bidder(s) is (are) a good faith Purchaser(s) pursuant to section 363(m) of the Bankruptcy Code.
- (n) Absolute Offerings: The final high bids that are offered on the Property are absolute, without reserve, will be accepted at the time and place of the Auction, subject to the approval of the Debtors in their sound business judgment and the United States Bankruptcy Court for the District of New Jersey.
- (o) The Sale Hearing: A hearing to confirm the results of the Auction, if any, and/or to approve the sale of the Property will be held before The Honorable Rosemary Gambardella, United States Bankruptcy Judge, at the Martin Luther King Jr., Federal Building & Courthouse, Newark, New Jersey 07101, on **Monday, September 26, 2011, at 11:00 a.m. (E.S.T.)** (the "Sale

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Hearing") or as soon there after as practically possible. Objections to the sale, if any, may be presented at the Sale Hearing.

(p) **Modifications:** The Debtors and Auctioneer reserve the right to: (i) impose additional or different reasonable terms and conditions at or before the Auction, (ii) extend the deadlines set forth in the Sale Procedures and/or adjourn the Auction and/or the Sale Hearing; and (iii) the Debtors may at any time, in their sole discretion, reject any and all bids that are not from Qualified Bidders.

(q) **Buyer's Premium:** In addition to the final High Bid Price the Successful Bidder will pay a premium (the "Buyer's Premium"), payable by the purchaser, which will be added to the final bid which will be the total sale price of the Property. In consideration of services provided by Max Spann, Max Spann shall receive the Buyer's Premium as a commission of 10% of final bid price payable at the time of settlement. Max Spann will separately pay any buyer's broker who is properly registered with Max Spann. Such commissions shall be paid to Max Spann at the closing. This premium shall cover all fees, costs, and expenses incurred.

The Buyer's Premium shall be added to the final High Bid Price and inserted in the Agreement of Sale to determine the total purchase price.

(r) **Attorney Review Recommended:** All information contained in auction-related material should be carefully reviewed by a bidder's attorney prior to the Auction and is subject to and may be superseded by the Agreement of Sale and announcements made from the podium prior to the commencement of bidding. No attorney review period shall occur after the Auction.

(s) **Conduct Of The Auction:** Neither the Debtors, the Debtors' agents nor Auctioneer are permitted to bid at the Auction. Conduct of the Auction and increments of bidding are at the direction and discretion of the Auctioneer. The Debtors and the Auctioneer reserve the right to refuse admittance to or expel anyone from the auction premises for interference with auction activities, nuisance, canvassing, soliciting, or other reasons deemed necessary by the Auctioneer. In the event of a dispute between bidders, the Auctioneer shall make the final decision to accept the final bid, to re-offer and re-sell the Property, or to remove any of the Property from the Auction. If any disputes should arise following the Auction, the Auctioneer's records shall be conclusive in all respects.

(t) **Disclaimer:** Each Qualified Bidder, by submitting a bid for the Property, shall be deemed to acknowledge and represent:

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- that it is bound by the Bidding Procedures contained herein;
- that it had an opportunity to inspect and examine the Property and to review all pertinent documents and information with respect to the Property prior to making its offer and that it relied solely on that review and upon its own investigation, own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and
- that it did not rely upon any written or oral statements, warranties or representatives of the Debtors, or the Debtors' agents regarding the Property, or the completeness of any information provided in connection with the Property, the bidding process or the Auction.